

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GILBERT G. LUNDSTROM,

Defendant.

4:14CR3136

MEMORANDUM AND ORDER

The government has moved for a “an order authorizing a subpoena to the defendant, Gilbert Lundstrom, to produce certain original copies of documents and objects believed to be in the defendant’s possession.” ([Filing No. 76](#)). The government believes the ability to review the original of certain documents Defendant produced to the SEC will help the jurors read and understand the handwriting and notations on those documents. The government states it “intends to subpoena a small subset” of documents, and it “will identify the documents by the Bates numbering system used in the defendant’s SEC production.” [Id.](#)

The defendant objects because “[r]equiring the defendant to locate and produce these documents on the eve of trial . . . would be ‘unreasonable and oppressive,’” and likely unnecessary since the parties are currently “working on a stipulation regarding the identification of [Lundstrom’s] handwriting.” ([Filing No. 94, at CM/ECF p. 3](#)).

But with trial only a week away, a handwriting stipulation does not currently exist. And, the government’ request is consistent with the last-minute filing of several motions by defense counsel, requiring an immediate response by the government and the court to avoid a trial delay. Moreover, a stipulation as to whose handwriting is present will not make the handwriting easier to read, and if the handwritten entries were made at different

times (perhaps with different pens and/or ink colors), originals will be easier to thoroughly review than copies.

This is a complex case, with more than 20 counts charged in the indictment and involving “millions of pages of discovery.” Id. Out of respect for the jury, the court, and the interests of justice, the parties should anticipate and willingly pursue methods for allaying issues over the admissibility, legibility, and understanding of documentary evidence. As currently before the court on the government’s motion, that includes producing the originals of requested documents so the jury can better see and read handwritten notations that were, or allegedly were, made by the defendant.

Accordingly,

IT IS ORDERED:

- 1) The government’s motion for an order authorizing it to subpoena production of some of the original documents Defendant produced to the SEC, ([Filing No. 76](#)), is granted.
- 2) The government is authorized to immediately serve the subpoena.
- 3) To avoid any trial delay, Defense counsel shall accept service of the government’s subpoena on Defendant’s behalf, and upon receipt of the subpoena, defense counsel shall immediately produce the original documents as identified in the government’s subpoena.

October 7, 2015.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge